

ADOPTION BY SAME-SEX COUPLES

Ketevan Kukhianidze, PhD student

Grigol Robakidze University, Tbilisi, Georgia

Abstract

Kindness, love and compassion are vital values of humanity. They are also the basic principles for a family home for any child. It is commonly believed that children are the important part of the family. But unfortunately, nowadays, there are groups of children who do not have parents or relatives and are hoping for permanent homes. In this case adoption is considered as the necessary, legal process by which a child is placed into a loving, stable home. The need for adoptive families is tremendous, but the process of adopting a child can prove to be quite difficult, especially, when the potential adopters are same-sex couples, who are willing to adopt children and create a family together. Currently, not all states permit same-sex couples to adopt. Many lesbian, gay, and bisexual people would like to be parents. In this situation second parent adoption (also called a co-parent adoption), joint adoption and equitable adoption are the ways for such couples to become legal parents of children.

Keywords: Child adoption, same-sex couples, compensation, marital status

The family is the basic unit of our society. While the family unit remains at the center of the social structure today, the interpretation of the word "family" has changed through the years. The traditional family unit is "two or more persons related by birth, marriage, or adoption who reside in the same household". Some individuals define family as a group of people

who love and care for one another. But defining the family structure of non-traditional families (gay and lesbian parents) can be a challenging task in the twenty first century, which leads to an evolution in the meaning of family.

If two women adopt a child, the child has no father figure. If two men adopt a child, the child has no mother. As an increasing number of gay and lesbian couples are starting families, adoption by same-sex couples is becoming more widespread.

Same sex parenting through adoption is becoming a reality for lesbians and gay men in the United States of America, Europe, South Africa, Canada and Western Australia. The main idea of changing stereotypes is the recognition that emotional security, stability and criteria assessing the best interests of the child are the ideal basis for decisions regarding adoption rather than criteria relating to sexual orientation and marital status.

Currently a child can enter into the lives of same-sex couples in a limited number of ways. The same-sex couples can attempt to adopt jointly ("joint adoption"), or as a ("second parent adoption") or as an equitable adoption.

The term *second-parent adoption* was first used in legal literature by Elizabeth Zuckerman in a 1986 (Davis Law Review Paper on Lesbian Families). Zuckerman used second-parent adoption "to designate the adoption of a child by her parent's non-marital partner, without requiring the first parent to give up any rights or responsibilities to the child."

A second parent adoption (also called a co-parent adoption) is a legal procedure that permits a same-sex parent to adopt her or his partner's biological or adoptive child without terminating the first parent's legal status as a parent. In another words this form of adoption allows two unmarried people to become the legal adopted parents of a child, giving both parents legal rights to that child as well as giving the child the legal and financial

benefit, including inheritance rights, wrongful death and other tort damages, Social Security benefits, and child support. Moreover, this form of adoption fosters children's emotional and developmental health by recognizing the children's actual relationship to both adults in such families. It has proved a powerful legal apparatus for gay and lesbian families. If the adoptive parents ever separate, the child can have visitation with the second parent, the second parent can have custody of the child, and the second parent will remain responsible for support of the child. This form of adoption grants an opportunity for a non biological parent to forge a legal relationship with his or her partner's biological child (who usually is either from a previous relationship, or born to the couple through in vitro fertilization, surrogacy, or other similar alternative method). To date, several second parent adoptions have been granted in the United States. Vermont, New Jersey, Massachusetts, Pennsylvania, California, Connecticut, New York, Illinois, Colorado, Connecticut, Delaware, Hawaii, Indiana, Iowa, Maine, Nevada, New Hampshire, Oregon, Rhode Island, Washington and the District of Columbia-expressly permit second-parent adoption.

Joint adoption is another form of adoption that gives possibility two unmarried people simultaneously to adopt a child with whom they have no legal relationship. Joint adoption allows the adoption process to be completed in one step, rather than one parent adopting a child and then the other parent filing for a second-parent or co-parent adoption. Nowadays California and Massachusetts have allowed joint adoptions by gay and lesbian couples, but many other states have denied them. Adoption by both same-sex partners will guarantee adoptive children a continued relationship with both parents and makes the children suitable for both public and private benefits extending from both parents, including insurance, social security, worker's compensation benefits, and intestate succession. It is interesting that

the benefits of joint adoptions and second-parent adoptions regardless of the sexes of the couples-are not identical. Joint adoptions potentially benefit several parties: the adopted child, the adoptive parents, and the state. The advantages to the adopted child are not only the stability and care provided by being raised in a home with two parents, but also the child's additional financial and legal security.

Equitable adoption is a form of "adoption" that may be used by a child of same-sex parents as a tool to protect the child's rights to his or her parent's assets should a parent die intestate. In order for a successful equitable adoption to occur, five elements must be proven: (1) an agreement must have existed between the natural parents and the adoptive parents; (2) the natural parents must have performed by giving up the child; (3) the child must have performed by living in the adoptive parents' home; (4) the adoptive parents must have partially performed by raising the child as their own; and (5) the adoptive parent(s) must have died intestate. If all the elements of an equitable adoption are proven, the adopted child will be able to inherit his or her intestate share of the parents' estates; otherwise, this child will be left without a share of the inheritance.

Many people hold strong and sincere beliefs on same sex adoption. They say that it should not be allowed because children need a mother and a father. It is said that same sex adoption pointed to the increased risk of growing up to be gay or lesbian. Their position is based on the following points:

- 1) That homosexuality is wrong and unnatural;
- 2) Same sex adoption would be detrimental to society and to marriage;
- 3) That same sex adoption is not in the best interests of children;
- 4) Denying same sex couples eligibility to adopt is not discriminatory
- 5) That there is no need for reform.

- 6) That such a change lacks public support.
- 7) And would have adverse effects on the adoption process.

In “Children of Lesbian and Gay Parents,” a 1992 article in *Child Development*, Charlotte Patterson states, “Despite dire predictions about children based on well-known theories of psychosocial development, and despite the accumulation of a substantial body of research investigating these issues, not a single study has found children of gay or lesbian parents to be disadvantaged in any significant respect relative to children of heterosexual parents.”

Psychiatrist Laurintine Fromm, of the Institute of Pennsylvania Hospital, agrees with that finding. “[The] literature...does not indicate that these children fare any worse [than those of heterosexual parents] in any area of psychological development or sexual identity formation. A parent's capacity to be respectful and supportive of the child's autonomy and to maintain her own intimate attachments far outweighs the influence of the parent's sexual orientation alone.”

The American Academy of Pediatrics, the National Association of Social Workers, and the American Psychological Association (APA), recognize that gay and lesbian parents are just as good as heterosexual parents, and that children thrive in gay- and lesbian-headed families. One APA publication reports, "Not a single study has found children of gay or lesbian parents to be disadvantaged in any significant respect relative to children of heterosexual parents".

Conclusion

The article underlines that adoption of children by same-sex couples is an issue of active debate. The adoption forms such as joint adoption, second parent adoption or an equitable adoption give opportunity for same-sex couples to become adoptive parents.

Despite significant differences on the issue of same sex adoption between social groups, the reality is that same sex families exist and adoption by same-sex couples nowadays is becoming more widespread.

References:

Stewart N. Adoption by Same-Sex Couples and the Use of the Representation Reinforcement. Theory to Protect the Rights of the Children, Vol. 17(pp. 348-363) (Eds.), Texas Wesleyan Law Review, 2010-2011.

Jodi L. Bell. Prohibiting Adoption by Same-Sex Couples: Is It in the “Best Interest of the Child”? (Eds.), Drake Law Review, Vol. 49. (pp. 345), 2000-2001.

National Center for Lesbian Rights. Adoption by Lesbian, Gay, and Bisexual Parents: an Overview of Current Law. www.nclrights.org (pp. 1-3), 2012.

Adoption by same sex couples. Final Report No2, (Eds.).Tasmania Law Reform Institute, (pp1-87), 2003.

Ritter Michael J. Adoption by Same-Sex Couples: Public Policy Issues in Texas Law & Practice, (Eds.), Texas Journal on Civil Liberties & Civil Rights , Vol. 15:2, (pp235-256), 2009-2010.

National Center for Lesbian Rights. Adoption by Lesbian, Gay, and Bisexual Parents: An Overview of Current Law, www.nclrights.org 2012.

Baker B. Same-Sex Marriage and Religion: An Inappropriate Relationship, Vol 1, No 3, 2010.

<http://journals.chapman.edu/ojs/index.php/e-Research/article/view/87/307>

Strasser M. Adoption and the Best Interests of the Child: On the Use and Abuse of Studies, (Eds.). New England Law Review, Vol. 38:3, (p 631).

9. Burleson El. International Human Rights Law, Co-parent Adoption, and the Recognition of Gay and Lesbian Families, (Eds.), Loyola Law Review, Vol. 55, (pp. 791 - 803), 2009.

Polikoff N. D. A Mother Should Not Have to Adopt Her Own Child: Parentage Laws for Children of Lesbian Couples in the Twenty-First Century, (Eds). Stanford Journal of Civil Rights & Civil Liberties. Vol. 2 (p. 205), 2009.

Hong K. E. Parents Patri[archy]: Adoption, Eugenics, and Same-Sex Couples, (Eds). California Western Law Review Vol. 40, No 1, Fall 2003.

National Adoption Information Clearinghouse, Gay and Lesbian Adoptive Parents, Resources for Professionals and Parents. April 2000.
http://naic.acf.hhs.gov/pubs/f_gay/index.cfm.

Patterson C. J. Children of Lesbian and Gay Parents. Child Development: 1025-1039. 1992.